



COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO UTILITY ONE SOURCE FORESTRY EQUIPMENT LLC EPA ID No. VAD981108178

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Utility One Source Forestry Equipment LLC for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.

6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Facility" or "Site" means the UOSFE facility located at 12660 East Lynchburg Salem Turnpike in Forest, Virginia.
9. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
10. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
11. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
13. "Order" means this document, also known as a Consent Order.
14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
15. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
16. "UOSFE" means Utility One Source Forestry Equipment LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. UOSFE is a "person" within the meaning of Va. Code § 10.1-1400.
17. "Universal waste" means any of the hazardous wastes meeting the definition provided in 40 CFR § 273.9 that are subject to the universal waste requirements of 40 CFR Part 273, including batteries as described at 40 CFR § 273.2, pesticides as described at 40 CFR § 273.3, mercury-containing equipment as described at 40 CFR § 273.4, and lamps as described at 40 CFR § 273.5.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.

20. "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
21. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. UOSFE owns and operates the Facility, which is located in Forest, Virginia. The Facility fabricates and assembles vehicle bodies and trucks specifically geared towards forestry activities. The Facility also performs repair and maintenance work. Operations at the Facility are subject to the Virginia Waste Management Act, the VHWMR, and the VSWMR.
 2. UOSFE is a LQG of hazardous waste. UOSFE was issued EPA ID No. VAD981108178 for the Facility.
 3. At the Facility, UOSFE generates solid wastes which are also hazardous wastes. Hazardous wastes generated at the Facility include wastes with the following waste codes: D001, F003, F005, as described in 40 CFR § 261.21. These hazardous wastes are accumulated in containers at the Facility after generation.
 4. On March 14, 2018, DEQ-BRRO staff inspected the Facility for compliance with the Virginia Waste Management Act, the VHWMR, and the VSWMR. Based on the inspection and follow-up information, the Department made the following observations:
 - a. The Facility has generated Large Quantity Generator amounts of hazardous waste during at least one month per calendar year since January 2015. The Facility had not notified DEQ that their generator status had increased from a SQG to a LQG.
- 9 VAC 20-60-315(D) requires anyone who becomes a large quantity generator to notify the Department in writing immediately of this change in status and document the change in the operating record.
- b. As a LQG, the Facility failed to submit a biennial report for the hazardous waste generated during the 2015, 2016, and 2017 calendar years.

40 CFR § 262.41 requires generators who ship any hazardous waste off-site to a treatment, storage, or disposal facility within the United States to submit a biennial report by March 1 of each even numbered year.

- c. The Facility has not paid the annual fee for the calendar years during which they were a LQG (2015, 2016, 2017).

9 VAC 20-60-262(B)(8) states that large quantity generators are required to pay an annual fee as specified in 9 VAC 20-60-1260 through 9 VAC 20-60-1286.

- d. The Facility accumulates spent aerosol cans in hazardous waste satellite accumulation containers. At the time of the inspection, one satellite accumulation container was observed to be open in the Repair Shop.

40 CFR § 265.173(a) requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

- e. Several hazardous waste satellite accumulation containers were not labeled with the words "Hazardous Waste". The unlabeled containers included satellite containers in the Lacquer Thinner Shed at the Lift Building (paint waste), two containers at recycler in the Fabrication Shop (spend solvents and spent bags), and the aerosol can satellite area containers located in the Repair Shop and Fabrication Storage Room.

40 CFR § 262.34(c)(1)(ii) requires that generators of hazardous waste mark hazardous waste containers in satellite areas with the words "Hazardous Waste".

- f. The Facility collects, accumulates, and manages spent lamps as universal waste. At the time of the inspection, nine containers of spent fluorescent lamps were observed in the maintenance area. None of the containers were labeled as to their contents.

40 CFR 273.14(e) requires universal waste containers to be labeled with the words "Universal Waste – Lamps(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

- g. Four of the nine containers accumulating the spent lamps noted in Item #6 were not closed.

40 CFR § 273.13(d)(1) requires that a generators of universal waste contain any lamp in containers or packages that . . . must remain closed.

- h. Based on documentation and observations, the Facility was unable to demonstrate the length of time that universal waste spent lamps and universal waste batteries had been accumulated on-site.

40 CFR § 273.15(c) states that a small quantity handler of universal waste must be able to demonstrate the length of time that universal waste has been accumulated.

5. On May 7, 2018, based on the March 14, 2018 inspection and follow-up information, the Department issued NOV No. 18-05-BRRO-002 to UOSFE for the violations described in Paragraph C(4) above.
6. On June 12, 2018, DEQ staff and representatives of UOSFE met to discuss the NOV.
7. On June 13, UOSFE submitted written responses to the NOV. In addition to documentation previously submitted, this documentation demonstrated return to compliance for all violations cited in the NOV.
8. Based on the results of the March 14, 2018 inspection, and the documentation submitted by UOSFE, the Board concludes that UOSFE has violated 9 VAC 20-60-315(D), 40 CFR 262.41(a), 9 VAC 20-60-262(B)(8), 40 CFR § 265.173(a), 40 CFR § 262.34(c)(1)(ii), 40 CFR § 273.14(e), 40 CFR § 273.13(d)(1), and 40 CFR § 273.15(c) as described in paragraph C(4), above.
9. UOSFE has submitted documentation that verifies that the violations described in Paragraph C(4) above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Utility One Source Forestry Equipment LLC, and Utility One Source Forestry Equipment LLC agrees to pay a civil charge of \$13,685.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

UOSFE shall include its Federal Employer Identification Number (FEIN) (_____) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Utility One Source Forestry Equipment LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of UOSFE for good cause shown by UOSFE, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, UOSFE admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. UOSFE consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. UOSFE declares that it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by UOSFE to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. UOSFE shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. UOSFE shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. UOSFE shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which UOSFE intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and UOSFE.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after UOSFE has completed all of the requirements of the Order;
 - b. UOSFE petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to UOSFE.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve UOSFE from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by UOSFE and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of UOSFE certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind UOSFE to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of UOSFE.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, UOSFE voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13th day of June, 2019.



Robert J. Weld, Regional Director
Department of Environmental Quality

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Utility One Source Forestry Equipment LLC voluntarily agrees to the issuance of this Order.

Date: 4/12/19 By: [Signature]

Commonwealth of Virginia

City/County of Bedford

The foregoing document was signed and acknowledged before me this 12 day of

April, by Mark Sharman

[Signature]
Notary Public

363778
Registration No.

My commission expires: 12/31/2022

Notary seal:

